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WASHINGTON, D C.

STATEHOOD CONSTITUTIONAL CONVENTION

6:40 o'clock p.m.
Monday,
May 4, 1982

9th Floor auditorium
10th and E
Washington, D.C.

The above-named session was called to order, pursuant to notice, by CHAIRPERSON JANETTE HARRIS.

P R O C E E D I N G S 6:40 p.m.

CHAIRPERSON HARRIS: The Plenary Session on the first reading of the Constitution is hereby called to order.

May we pause for silent prayer?

DELEGATE CORN: And meditation.

[Brief moment for prayer and meditation.]

CHAIRPERSON HARRIS: The court reporter indicated earlier that during the roll call, the hall is so noisy, she can hardly hear you answer to the roll.

Will the Secretary please call the roll?

[Secretary Cooper calls the roll as follows:]

Delegate Baldwin; Delegate Barnes, Present; Delegate Blount, Present; Delegate Bruning, Here; Delegate Cassell; Delegate Clarke; Delegate Coates, Present; Delegate Cooper, Present; Delegate Corn; Delegate Croft; Delegate Eichhorn, Here; Delegate Feely; Delegate Freeman; Delegate Garner, Here; Delegate Graham, Here; Delegate Harris, Here; Delegate Holmes, Here; Delegate Jackson; Present; Delegate Johnson; Delegate Jones, Here; Delegate Jordan, Here; Delegate Kameny, Here; Delegate Lockridge, Here; Delegate Long; Delegate Love; Delegate Maguire, Here; Delegate Marcus; Delegate Charles Mason, Here; Delegate Hilda Mason, Here; Delegate Brian Moore, Present; Delegate Jerry Moore; Delegate Talmadge Moore, Here; Delegate

Nahikian, Here; Delegate Nixon; Delegate Oulahan --

CHAIRPERSON HARRIS: The Secretary needs your attention.

[Roll call continues:] Delegate Paramore, Here; Delegate Robinson; Delegate Rothschild; Delegate Schrag, Here; Delegate Shelton; Delegate Simmons; Delegate Street; Delegate Terrell; Delegate Thomas, Here; Delegate Warren;

[The roll call is repeated for those not replying to the first call. Corn replies Yes; Delegate Feely, Present; Nixon, Here; Delegate Shelton, Present. Others not present.]

SECRETARY COOPER: Madam Chair, 27 Delegates present.

CHAIRPERSON HARRIS: We have 27 Delegates present, so we shall begin.

At our last meeting we ended at Section Six of the Executive Branch Committee's report.

It is impossible to hear.

Tonight we will begin page 4 of 12, Section 7, Budget of Executive Branch Committee's Report. The Chair of the Committee will be here momentarily and at this point, will Delegate Lockridge read the section we are to deal with this evening, please?

DELEGATE CORN: Point of order, Madam Chair, it

has been read once.

CHAIRPERSON HARRIS: Delegate Lockridge, will you please proceed?

DELEGATE LOCKRIDGE: Before the reading, Delegate Maguire would like to have a moment here of your attention, please.

CHAIRPERSON HARRIS: Delegate Maguire would like to have a moment of your attention.

DELEGATE MAGUIRE: Before going on to adopting section 7 of the Executive Branch Article, this committee would like to ask for unanimous consent in some wording changes of the sections already adopted.

Since we have agreed to have two elected officials, that being the Governor and the Secretary of State, it is this committee's position that the Secretary of State, a more prestigious title could be that of Lieutenant Governor and that his role should not be changed, as we voted on last night, but merely to have the name change.

There is no other state that has only an elected Governor and Secretary of State, particularly running on the same platform, so for purposes of conformity and prestigiousness, this committee would ask for unanimous consent that the Secretary of State name be changed to that of Lieutenant Governor in everything that we have dealt with this far.

DELEGATE LOCKRIDGE: I think it is important, Delegate Maguire, that you mention that Brian Moore has agreed that he would be acceptable to this.

DELEGATE MAGUIRE: Right. Delegate Moore has no problems with this consent.

DELEGATE KAMENY: Are you making that a motion?

DELEGATE MAGUIRE: I don't know how you work that. What we want is unanimous consent.

CHAIRPERSON HARRIS: So what you are stating is that the Lieutenant Governor rightfully gained that office as --

DELEGATE MAGUIRE: What we are saying is, everything that we adopted last night under the words of "Secretary of State" shall be changed to the words "Lieutenant Governor."

CHAIRPERSON HARRIS: That is a reconsideration, because that was voted on.

DELEGATE MAGUIRE: I am asking unanimous consent.

CHAIRPERSON HARRIS: It can,t be done like that, that is according to the Rules.

DELEGATE MAGUIRE: It is not a reconsideration. It is a unanimous consent.

DELEGATE SCHRAG: Point of order.

CHAIRPERSON HARRIS: Yes, Delegate Schrag.

DELEGATE SCHRAG: Madam President, a Parliamentary

body can always do anything by unanimous consent. By unanimous consent, a Parliamentary body can do anything it has the power to do, okay?

Now, I hope that in view of the committee's statement that what it is seeking here is unanimous consent, is that we can find out whether there is unanimous consent and I hope that we do not get into a long wrangle about this.

But the procedure would be for you to ask the body

CHAIRPERSON HARRIS: I know what the procedure is.

DELEGATE SCHRAG: -- whether there is unanimous consent for this and if so, it is proper for a body to do anything by unanimous consent.

DELEGATE MAGUIRE: We are simply asking for a name change, not a substitute change.

CHAIRPERSON HARRIS: Okay, Delegate Barnes.

DELEGATE BARNES: I would just like to make it known that I go along with the action.

CHAIRPERSON HARRIS: With the committee.

DELEGATE BARNES: Yes.

CHAIRPERSON HARRIS: Delegate Maguire, then it might be in order for you to put that in the form of a motion.

DELEGATE MAGUIRE: I would motion that -- therefore, that the words "Secretary of State" as voted on thus far be

changed to that of "Lieutenant Governor."

DELEGATE KAMENY: Second.

[The motion is made and seconded.]

CHAIRPERSON HARRIS: A point of clarification, that section 2, the Executive Branch Committee's report, was adopted by this body and it was adopted as section two of the Executive Branch's Article to the Constitution.

DELEGATE MAGUIRE: Correct.

CHAIRPERSON HARRIS: Therefore, in order for it to come back on the Floor, it has to be reconsidered, because it was voted on.

DELEGATE MAGUIRE: But if I could go back to Delegate Schrag -- if I could go back to his point of order, he said the body can do anything by unanimous --

CHAIRPERSON HARRIS: No.

DELEGATE MAGUIRE: -- consent and what I am asking for is the unanimous consent, not reconsideration.

CHAIRPERSON HARRIS: No. No, I am sorry. The body cannot do anything by unanimous consent.

DELEGATE MAGUIRE: All right, then, I would move for reconsideration.

[A motion is made.]

CHAIRPERSON HARRIS: An article that has been voted

on by the -- let me clarify something. The other night, there was a concern of 3.10 and it had to be reconsidered because it had been voted on by this body.

I think the same thing would apply for Section 2 of the Executive Branch.

DELEGATE MAGUIRE: Then we are in a bad situation because --

CHAIRPERSON HARRIS: Delegate Eichhorn.

DELEGATE MAGUIRE: Madam Chair --

DELEGATE EICHHORN: You are making this unnecessarily complicated. She is asking for consent, unanimous consent. All the Chair has to do is ask if there is any objection.

If there is no objection -- could I have the attention of the Chair? This does not call for a motion. The motion would be a reconsideration.

This body can make a decision by unanimous consent.

CHAIRPERSON HARRIS: An article that has been approved, voted on by this body, to be a part of the Constitution, has to go through a reconsideration to bring it back up.

DELEGATE MAGUIRE: Well, then, I move for reconsideration.

[A motion is made.]

CHAIRPERSON HARRIS: But we cannot reconsider an

article that has been voted on by the Convention.

[Side conference. Side discussions.]

CHAIRPERSON HARRIS: I understand you are lobbying people on the floor but -- Barbara Maguire, you can move to rescind that.

DELEGATE MAGUIRE: I move to strike -- Delegates, could I have your attention, please? Delegates, your attention, please? I therefore move to strike out and re-insert -- strike out the word "Secretary of State" and reinsert the word "Lieutenant Governor," whereever it appears.

[The motion is made.]

VOICE: What kind of motion is that?

DELEGATE MAGUIRE: I am just moving that at the direction of the Chair.

We are not creating -- what we are doing -- if I can speak to the rationale, maybe that would help matters a little --

[General disagreement with motion expressed by body.]

CHAIRPERSON HARRIS: It has to be reconsidered because it has been voted on by the body.

DELEGATE MAGUIRE: Delegates, if you would give me 30 seconds to speak to the rationale --

VOICE: What do you know about it?

CHAIRPERSON HARRIS: Delegate Maguire, may we hear Delegate Simmons? Is she here?

DELEGATE SIMMONS: Yes, I am sitting right here.

CHAIRPERSON HARRIS: Delegate Simmens, may we hear a discussion for the body on this proposal from you that Delegate Maguire is [advancing]?

DELEGATE NAHIKIAN: What's wrong with Delegate Maguire?

CHAIRPERSON HARRIS: You are out of order. Delegate Simmons is the Chair of the Committss.

DELEGATE SIMMONS: It was not my proposal. I can't give you a rationale for somebody else's thinking.

CHAIRPERSON HARRIS: Is this the thinking of the committee, is what I am asking?

DELEGATE MAGUIRE: Yes, it is the thinking of the committee.

DELEGATE SIMMONS: The Committee had done its thinking and the Committee had offered to this body its best judgment. This body did not have to go along with the judgment of this committee. I am not about to come back here today and beg you, now, to go along because maybe you had some second thoughts. I am not going to do that. What we have done is, we have changed -- what we had done last night -- is

the name of Lieutenant Governor in every instance where Secretary of State was inserted and I am not going to play this kind of game with this body.

VOICE: Thank you.

DELEGATE SIMMONS: We offered them our best thinking and they ruled upon it in terms of their best interest.

Now, let's move forward.

CHAIRPERSON HARRIS: Delegate Simmons, do you move Section 7 -- would you move it, please, of the Executive Branch Committee's report?

DELEGATE SIMMONS: Don't ask me to move something that I don't know anything about. And I am not going to beg, either. That is not my posture.

Section 7 is before the body, Budget, General and Deficiency Appropriations Bill and we have three divisions in this section, A) is submission, B) is veto and C) is reduction in expenditures.

You may wish to --

CHAIRPERSON HARRIS: Take section A.

DELEGATE SIMMONS: You may wish to have these ad seriatim. I would like to move that Section 7 with amendments be adopted and I am willing to have letters A, B and C handled in an ad seriatim fashion.

[Motion is made. There is a second.]

CHAIRPERSON HARRIS: It has been properly moved and seconded that section 7 be taken ad seriatim beginning with A) Submission. May we have the reading of the minority report?

DELEGATE CORN: The minority report is in lines 6 and 7. I would strike the words in line 6, "From any fund" and the word in line 7, "Thereto."

The sentence will now read, "Proposed expenditures shall not exceed the estimated appropriations."

The rationale behind this is that since we do not know how the Taxation and Finance Committee is going to set up the taxes and the revenues of the budget, if you strike those words -- if you keep those words in, then it means that revenue comes from different sources and may be only used if it is appropriated from one source, it may only be used for that one thing.

Whereas, this way, it leaves it more open by striking those words.

[The motion is made.]

CHAIRPERSON HARRIS: Delegate Corn, is there a second for your proposal?

[Reporter does not hear a second.]

CHAIRPERSON HARRIS: It has been moved and seconded

that the minority report stated that on line 6 we strike "from any fund," line 7, "thereto." The sentence should now read, "Proposed expenditures shall not exceed the estimated appropriation."

Discussion. Delegate BArnes.

DELEGATE BARNES: Is it in order to make a motion addressing the entire Section 7?

CHAIRPERSON HARRIS: No. At this time we address the minority report.

DELEGATE BARNES: Well, I would like --

CHAIRPERSON HARRIS: After that, then you may make your motion.

DELEGATE BARNES: Okay.

CHAIRPERSON HARRIS: Discussion. Delegate Brian Moore.

DELEGATE BRIAN MOORE: Yes. Just a point of information. Does the sentence there on line 6 mean that the government will operate on a balanced budget? Is that what it really means?

DELEGATE CORN: May I respond to that, Madam Chairman?

CHAIRPERSON HARRIS: Yes.

DELEGATE CORN: By striking those words -- by striking the words that I am suggesting to strike, it means

that they must operate on a balanced budget. If you keep in the words that I wish to strike, it does not necessarily mean that there is a balanced budget.

CHAIRPERSON HARRIS: I am sorry, Delegate Corn, I cannot hear you for the mumbling and noise.

DELEGATE CORN: If you strike the words that I have suggested to strike, then what it means is that there must be a balanced budget. If you leave in the words that I have requested be stricken, what it means is that only that section of the budget that the Governor is specifically -- that the proposed expenditures for any funds shall not exceed the estimated appropriation from that specific fund.

That is what it means if you leave it as it is whereas by striking from any fund and thereto, it means that the entire budget must be balanced and that is why I urge you all to sustain me in this vote.

CHAIRPERSON HARRIS: Is there any other discussion on this proposed amendment? Delegate Coates.

DELEGATE COATES: Yes, I would move to amend the amendment to strike the word "appropriation" and "certain."

[A motion is made.]

DELEGATE CORN: So you would like to have it, "Proposed expenditures shall not exceed estimated revenues"?

DELEGATE COATES: Yes.

DELEGATE CORN: I would go along with that.

[There is a second.]

CHAIRPERSON HARRIS: Is there any other discussion?

DELEGATE CORN: May I read it now?

CHAIRPERSON HARRIS: Yes.

DELEGATE CORN: It now reads, with this amendment, "Proposed expenditures shall not exceed estimated revenues."

CHAIRPERSON HARRIS: Is there any other discussion on the proposed amendment?

All in favor of striking lines 6 "from any funds," and line 7, "thereto" and deleting "appropriations" and replacing it with "revenues," please raise your hands.

DELEGATE CORN: Come on, hands. You don't want a balanced budget?

CHAIRPERSON HARRIS: Please Gloria, just vote. With your hand.

All opposed.

Okay, the amendment loses 5 to 11. Delegate Simmons.

DELEGATE SIMMONS: We have heard --[interrupted]

CHAIRPERSON HARRIS: Delegate Mason, minority report.

DELEGATE CHARLES MASON: I have a very minor change. In line A after the word "legislature" and the words "one or

more." Present practice is to permit a single appropriations bill but it could be one, it could be two or three or five [impossible to hear owing to overtalking.]

CHAIRPERSON HARRIS: Delegates, it is difficult to hear the proposed amendment with all the noise and the discussion in the back. The court reporter cannot hear it and neither can we.

DELEGATE CHARLES MASON: Line A, after the word "legislature," insert the words "one or more." So moved.

[The motion is made. There is a second.]

CHAIRPERSON HARRIS: It has been moved and properly seconded that after the word "legislature" we should insert "one or more bills." Discussion on the motion?

Delegate Brian Moore.

DELEGATE BRIAN MOORE: I would like the maker of the motion to explain his rationale.

DELEGATE CHARLES MASON: My rationale is simply that the Mayor submits a budget without one single appropriation bill. I see no reason why the Governor should not do the same if he wants to. [Overridden by personal conversations.]

CHAIRPERSON HARRIS: Okay, all of those in favor of after the word "legislature" we should insert "one or more appropriation bills," please let me know by showing your hands.

Opposed. Abstention Three abstentions. So carried. Delegate Love.

DELEGATE LOVE: Madam Chair, I would like to move to strike the following language. In line 6,"proposed expenditures from any fund shall not exceed the estimated appropriations thereto." I think this is talking about something about a balanced budget. Unless we are willing now to discuss the implications that this creates, I would rather have this out and discuss the implications of that when Finance and Revenue's proposal comes on the floor.

I am very nervous about voting something like this in until all of us have a clear understanding of what is happening and what the implications are so I would like to move to strike this and then Finance and Tax Committee will make their recommendations because I think they have something similar.

[A motion is made.]

DELEGATE SCHRAG: Point of order. Wasn't this under submittal by Delegate Corn? Haven't we already disposed of this?

DELEGATE LOVE: No, because I am not moving to strike the whole sentence.

CHAIRPERSON HARRIS: Yes, but she moved to strike

part of it and delete "appropriations" and insert "revenue" and that was defeated by the body. So we shall move on.

DELEGATE LOVE: I understand what she moved. I am moving to strike the whole sentence. This is a different motion, completely different.

CHAIRPERSON HARRIS: But it still has the same implication.

DELEGATE LOVE: Not at all.

MANY VOICES: No, no it does not.

CHAIRPERSON HARRIS: Is there a second for that motion?

[There are several seconds.]

CHAIRPERSON HARRIS: It has been moved and properly seconded by Delegate Love that we strike the sentence on line 6 that begins with"proposed" and ends on line 7, "thereto."

Discussion on the motion. Delegate Simmons.

DELEGATE SIMMONS: Yes. I would want it very clear that what the committee was about was, in essence, that it is prudent and appropriate that one not plan the expenditures for more than one plans in terms of revenue receiving.

We have no jealous prerogatives, as you are aware, and I think as our document indicated. We are not from the executive branch, trying to dictate what will occur in this

Constitution.

We are very conscious about providing a creditable, a prudent and an acceptable kind of document that is passable, both at the ratification level of citizenry and at the approval of the Congress.

I would be satisfied if I could hear from the Taxation and Finance Committee with regard to the provision of this intent and if it exists, we certainly have no jealousy of rights and authorship of where it shall be. We want the concept and the document. That is all we are about.

So if I could hear from the Chairman of Taxation and Finance and be assured that this concept is appropriately covered and delineated constitutionally so that our document is a reasonable and a prudent one.

I would be happy to support the amendment to that purpose.

CHAIRPERSON HARRIS: Okay, I think as a point of clarification I would like to ask Delegate Coates to come up front and speak to that. But while he's coming up, I would like to make an editorial note here.

There are four different conversations going on. This is very disruptive. It is hard to hear and all of us will have to come up and take this mic in the next month so I

think we ought to respect those who are here trying to carry on the proper business of the Convention because all this talking is disruptive. Delegate Coates.

DELEGATE COATES: Thank you, Madam President.

Fellow Delegates, the only matter not now encompassed in the Finance and Tax Article in its sections regarding budget, the only matter not covered which is presently before us in Section 7 of the report of the Committee on Executive, is the matter incorporated in Section C, specifically, "No appropriations shall be a mandate to spend."

Aside from that matter, every item which is before us or has been before us in Section 7 is now covered in the Article on Budget by Finance and Tax.

Moreover, we would indicate that there are additional features provided in the Article on Finance and Tax regarding budget. Those features provide that there shall be public hearings. They further provide that a summary of the budget will be made -- distributed to the public and the budget itself will be made available to the public.

Relative to that, they provide that no other matters can be merged in appropriation bills or in budget bills and they provide some other features which substantially expand upon the constitutional safeguards regarding budget so that

I submit and in consideration of the position articulated by the Chairperson of the Committee on the Executive, that it would be convenient for us to delete from the Executive Committee's Report, Section 7, except that as we did in the past evening, we would provide that the Governor shall submit to the legislature at the time fixed by law, a budget for the ensuing fiscal year.

This would identify in the section regarding the powers of the Governor that power to originate budget actions and if the Chair is accommodating, I have discussed with a member of the Finance and Tax Committee, Delegate BArnes, to offer such a motion for consideration.

If that, Madam Chair, is presented, it would obviate the matter of us having to work through this section in a detailed way, expediting our consideration with respect to and saving time for other matters that are a part of the Executive Committee's report.

CHAIRPERSON HARRIS: At this time, I think it would be appropriate to hear the response from the Chair of the Executive Committee.

DELEGATE SIMMONS: I certainly think that is most appropriate. I appreciate the comments from the Chairman of Taxation and Finance and as he indicated, his article is far

more complete than this section and as, of course, I would expect it to be because this is a section, not an article on taxation and finance.

The question that I did want answered, I believe you answered and went one step further and suggested that you have considerably more in your article and I commend you for that.

However, I am not about to say that this committee is going to wipe out everything here for an amendment. If you have an article that takes care of it, then why can't we very simply say, after we indicate that the Governor will make a submission, that the Governor has veto power and the statement with regard to reduction and expenditure, that all other matters with regard to this will be as indicated in this Constitution in articles on taxation and finance.

Does that make sense to you, Mr. Chair?

DELEGATE COATES: Yes, it does. As I said, the only matter we do not cover in our article -- that is, the Article on Finance and Tax on Budget, is the section 6, providing that no appropriations shall be a mandate to spend.

Aside from that, all now-incorporated in the article of the Executive Committee is covered and as a case in point of specific reference, the matter of the requirement of the

balance projection of expenditures with balance estimate or revenues --

CHAIRPERSON HARRIS: Delegate Coates, if you would simply answer the question, then we could move right along, whether it could be indicated where necessary that this is covered in the Article on Tax and Finance. Is that acceptable with you?

DELEGATE COATES: I perhaps do not understand the question.

CHAIRPERSON HARRIS: Delegate Simmons' suggestion was that we work through Section 7 and where appropriate --

DELEGATE SIMMONS: No, no. No, I think, Madam Chair, what I was saying was, I wanted the Chair of Taxation and Finance to deal with -- I am sure that in much greater depth -- we don't have taxation yet, a copy and rather than to engage in long delay and trying to rewrite this section to make it compatible with his, we are perfectly willing to acknowledge what are those prerogatives of the Governor that should be stipulated constitutionally.

And then, you know, all of the details -- the aspects of taxation and finance which is --

CHAIRPERSON HARRIS: Okay. We need to move on.

DELEGATE SIMMONS: But we have not seen it. That

is the problem. Now, there is another way we can handle it.

We can skip section 7, go to the other sections and act upon those because we don't have another section which is contingent upon what rests here. They all stand alone, these other sections.

And then maybe we could put together those sentences that would make 7 compatible with the other articles. I am sure you understand the problems we are laboring under.

CHAIRPERSON HARRIS: I understand. Yes.

DELEGATE SIMMONS: We have not seen taxation. We have not even --

CHAIRPERSON HARRIS: I understand that.

DELEGATE SIMMONS: -- seen it, so of course we cannot speak to it. But for us to defer to an unknown quantity, it is not intelligent in my book and I have great confidence in the Reverend.

CHAIRPERSON HARRIS: Yes. Okay. At this time we have a motion on the floor which is Delegate Love's motion. If Delegate Love withdraws his motion, then we could put this before the body.

DELEGATE LOVE: Madam Chairman, I would like to withdraw my motion. It seems to me that we have one of two alternatives here. One is we could declare a recess while the

two committees work out language. The other is, several people from the two committees could work out language and we could skip the section and move on. It does not matter to me.

But I felt if we could --

CHAIRPERSON HARRIS: Would you mind putting that motion on the floor to skip this section and go on to section 8?

DELEGATE LOVE: I'll so move.

CHAIRPERSON HARRIS: Is there a second?

[Motion made and seconded.]

CHAIRPERSON HARRIS: The main motion on the floor is to adopt section 7. Delegate Simmons, if you will withdraw that motion, then we can go on with the motion.

DELEGATE SIMMONS: Section 7 -- I think what we need to do is to simply set aside section 7.

CHAIRPERSON HARRIS: But you have a motion on the floor to adopt section 7.

DELEGATE SIMMONS: Right.

CHAIRPERSON HARRIS: Ad seriatim. So you need to withdraw that.

DELEGATE SIMMONS: I can't. It belongs to the body.

[Confers with committee.] I move that we defer section 7 until a later date in this night's agenda and move to section 8.

CHAIRPERSON HARRIS: Delegate Love, would you be willing to add "at a later date in this night's agenda"?

DELEGATE LOVE: I think the thing to do would be to move to postpone debate on section 7 for one hour.

CHAIRPERSON HARRIS: She is suggesting that we postpone debate until the end of this night's debate.

DELEGATE LOVE: Okay, two hours or whatever.

CHAIRPERSON HARRIS: All right, until we finish this section. Is there a second to the motion?

[Motion made and there is a second.]

CHAIRPERSON HARRIS: Okay, then, it has been moved and properly seconded that we defer section 7 until a later time in tonight's agenda.

Question, Delegate Coates?

DELEGATE COATES: I don't understand the rationale there for it, Madam Chair. There are not only matters relating to budget which are incorporated in various proposals but are also covered in others. Why should we adopt this provision to allow deferment and consideration of action with respect to section 7 when the same rationale obtains frequently in many other places?

This is not only with respect to the report of the Committee on Tax and Finance but others --

DELEGATE CORN: The Legislative Committee.

DELEGATE COATES: Other substantive committees.

Secondly, I do not know what the charge of the body is that there should be -- should I hazard a guess -- be a vote amongst the members, a vote of the Executive and Finance where the majority is? Then we could come back with that position as a recommendation which would then be a joint recommendation from the Committee on Executive and Finance and Tax? I do not know.

It appears to me that what we ought to do is act on section 7. Now.

CHAIRPERSON HARRIS: Okay, it seems to me that, from your two discussions and on section 7, that you need to work out those procedures when you do meet in order for it to move this section on, okay?

DELEGATE COATES: I don't know what you mean when you say "those procedures." What are "those procedures?" What are we supposed --

CHAIRPERSON HARRIS: You are asking me, would it be a joint submission or what? And I think that you and Delegate Simmons and the committee ought to work that out.

DELEGATE COATES: You mean, we would identify the purpose of our getting together? You know, the purpose --

CHAIRPERSON HARRIS: The purpose has been identified.

DELEGATE COATES: The purpose of doing that is to acquaint the Chair and the members of the Executive Committee what is now constituted in the Article on Finance and Tax.

Is that the purpose?

CHAIRPERSON HARRIS: Delegate Barnes.

DELEGATE BARNES: Because of the confusion that has come up -- and we on the committee have seen this earlier when we looked at section 7 -- I would like to make a motion to the body that is in order that we postpone consideration of section 7 entirely until the Finance and Taxation Committee is ready to report to the Convention.

And I am not saying this with disrespect to the Committee on the Executive but I think it is more appropriate to both proposals. They do not match each other perfectly but they should be debated together and I think that -- it would seem to me that this language could go in the Finance and Taxation Article.

So I am moving to postpone consideration of this section 7 until the Finance and Taxation Committee reports to the Convention.

CHAIRPERSON HARRIS: So you are moving a substitution?

Is there a second?

[Motion is made and there is a second.]

CHAIRPERSON HARRIS: It has been properly moved by Delegate BArnes that we postpone discussion on section 7 until -- at which time -- ?

DELEGATE BARNES: The Finance and Taxation Committee will report.

CHAIRPERSON HARRIS: Will report. Discussion, please.

DELEGATE JACKSON: Madam Chair, I would like to amend that. I would like to amend it only to say that upon that, the Executive Committee of the Finance and Taxation Committee should come back with a joint recommendation on this and then if we have to in that case amend the section on Executive, it will be a joint one and the resolution of both bodies.

[A motion is made and there are several seconds.]

CHAIRPERSON HARRIS: Delegate Jackson, your amendment is out of order.

DELEGATE JACKSON: Well, my amendment is to solve the problem we are going to have to face. They are going to have to get together and discuss this anyway. I am only suggesting that both committees get together and discuss this and come back with a joint recommendation and a new section

to put in. Otherwise, we will debate all night on how we are going to do this.

SEVERAL VOICES: That's right.

CHAIRPERSON HARRIS: It has been moved by Delegate Jackson and seconded properly that Finance and Taxation and Executive Committees meet jointly and discuss section 7 and come back and report jointly the recommendation of this body.

Discussion. Delegate Simmons.

DELEGATE SIMMONS: I want to know about the discussion. This discussion is not against the motion but I think that it is an observation that merits at least some consideration. It is very clear that the Governor or the Chief Executive of any state has both certain responsibilities and certain prerogatives with regard to the appropriations and the budget of that state and is the party, in the final analysis, held responsible.

I believe that we are establishing very bad precedent when we start setting aside and waiting and having joint action because I think that can be done more simply than that because this is not the only committee that is going to have interfacings on different kinds of considerations and we can have a magnificent stalemate going on while different committees are interfacing to make sure that there is compatibility with

every aspect which is obliquely touched upon by the preceding article and I only call to your attention that that precedent which is being recommended in this amendment to the amendment ought to be given some careful consideration in light of the fact that this is May 4th and that we still have a target of May 29th and that we certainly hope that there is going to be some reality to those dates.

DELEGATE JACKSON: Okay, if you will guarantee that it can be done in a better way, I will withdraw the amendment. I hope that there is a guarantee that that will be done.

CHAIRPERSON HARRIS: Okay, the amendment has been withdrawn and we are back to the substitute motion by Delegate Barnes, which is to postpone section 7, at which time the Taxation and Finance Commitee will report.

Discussion on that motion. Delegate Eichhorn.

DELEGATE EICHHORN: I would like to know if traditionally these issues are addressed in the article dealing with the Executive Branch. If that is so, I would be opposed to the notion but I would like to know if that is so.

On Judiciary, that is so. That is why we included it in the Judiciary.

DELEGATE SIMMONS: I think it would be brash, probably, to say "Yes, unequivocally" but it is more yes than no.

CHAIRPERSON HARRIS: Delegates, could we have some order here, please?

DELEGATE SIMMONS: Forty-one states have the very sentence that was recommended for deletion by Delegate Corn, for example. Forty-one states have what is tantamount to an anti-deficiency act. Some make it more blatantly than others.

CHAIRPERSON HARRIS: All right, let us discuss the motion, please, and that is the motion for postponement until the Taxation and Finance Committee report. Is there discussion on the motion? Delegate Love.

DELEGATE LOVE: Madam Chair, two things are happening here. One, it is fairly common for the constitutions to have this whole section in the section called "Finance and Tax". Alaska does and Hawaii does, for example.

On the other hand, Delegate Simmons seems to say to us that what she wants is two or three simple sentences there saying "The Governor shall submit a budget to the legislature and will have the right to veto subject to as described in the document" and I was going to suggest that she put those two or three simple sentences together in a meeting with Mr. Coates so that they won't say anything about the specifics and then tonight, we can vote on that -- put that in here.

It won't be controversial and then we can deal with

all these other smaller sections when we get to Finance and Tax. It seems to me that is a perfectly reasonable way to deal with it and that is why I would oppose this motion.

So let's just let Delegate Simmons and Delegate Coates get together and put two sentences together and okay them. That would be very easy.

CHAIRPERSON HARRIS: Your point is well-taken but there is a motion on the floor and it has to be voted either up or down. Is there any other discussion on the motion only?

If not, all those in favor of the motion by Delegate Barnes to postpone Section 7 at which time the Taxation and Finance Committee reports, please raise your hand.

All those opposed. Abstentions.

The motion loses. Back to the original -- back to the Love Amendment to postpone -- to delete --

DELEGATE LOVE: No, no, to postpone until the end of the session tonight at which point we will have some simple, two or three-sentence language.

CHAIRPERSON HARRIS: Okay, the Love Amendment is to [restates motion as above]. Discussion on that motion.

Delegate Coates.

DELEGATE COATES: Madam Chair, I do not understand the mechanism by which some language is worked out by the end

of tonight's meeting. I intend to be present in this meeting until it is adjourned.

DELEGATE SIMMONS: I intend to be present here, too.

DELEGATE COATES: And I submit that the Executive Committee might well do so. I do offer a substitute motion that we strike all of section 7 except that part of section A which reads "Submission. The Governor shall submit to the Legislature at a time fixed by law a budget for the ensuing year" period --"for the ensuing fiscal year" period.

Now, the reason therefore is --

CHAIRPERSON HARRIS: Fiscal period.

DELEGATE COATES: Yes, fiscal period, end of sentence. The reason for such motion, first, is that it allows us to complete work with respect to the Executive Committee's report. I do not think that they should be delayed.

I recognize their very dilligent work and their most excellent report. The second reason therefore is that there are matters of vital interest to the Executive Committee, or to delegates here, when the Article on Finance and Tax comes before us, it can be appropriately amended to incorporate those matters if it be the will of this body to adopt.

CHAIRPERSON HARRIS: Okay, Delegate Coates, that should get a second before you go into discussion.

DELEGATE JACKSON: Second, Madam Chair.

[Motion made and seconded.]

CHAIRPERSON HARRIS: Okay, please continue.

DELEGATE COATES: I stand corrected.

Thirdly, we have, in the article of Finance and Tax on Budget, covered every single matter which is now in the Executive Committee except that matter in Section C which provides no appropriation should be a mandate to spend.

What I am arguing is that we adopt the substitute motion and then consider that matter which singularly is the only matter that would not come back before us in the report from the Committee on Finance and Tax.

If we adopt that substitute motion, that will dispose of the issue before us and we will not have to involve ourselves in absenting at least 15 or 16 members of the body from these deliberations without very clear and direct and specific guidance as to what we might be doing.

CHAIRPERSON HARRIS: Thank you. Delegate Maguire.

DELEGATE MAGUIRE: I would like to amend the motion to include Section B. [Motion made. There is a second.]

CHAIRPERSON HARRIS: No, we are taking them ad seriatim so he has to do A first. He is in order.

DELEGATE MAGUIRE: He just moved to delete all the

sections that were passed.

MANY VOICES SIMULTANEOUSLY: Express disagreement.

CHAIRPERSON HARRIS: He said all of section 7.

You have to come to the mic, Delegate Maguire.

DELEGATE MAGUIRE: I would like to amend the motion to not delete section B because that section does belong in the Executive Article at the power of the Governor.

[Motion made and seconded.]

CHAIRPERSON HARRIS: Delegate Maguire has given us an amendment which is properly seconded to include Section B under veto. Discussion on that amendment? Delegate Rothschild.

DELEGATE ROTHSCHILD: I would like a point of information, Madam Chair. Last evening I spoke that there may be something in Section B, the veto section, that doesn't -- there is not everything in the veto section. That is the legislative veto section. Would you speak to that?

DELEGATE SIMMONS: Yes. What Delegate Rothschild is referring to is a discussion, a very brief one last night, with regard to section B. He said our veto is under considerable constraint and he is quite right because we are referring very specifically and exclusively to the veto power of the Governor with regard to budgetary matters only -- no other matters.

So he is quite correct and I believe that unless -- and I was going to raise it as a question -- but I certainly support Delegate Maguire's motion -- whether or not this veto power existed in the perogatives of the Governor as described in your section and if so, then maybe that is something we do need to get together on.

VOICE: Would you please explain what is going on here? What are we supposed to be voting on?

CHAIRPERSON HARRIS: Let me explain. We have an amendment on the floor here. We have a substitute and an amendment we are already at a level beyond the main motion so at this time we are only discussing before we vote.

Delegate Cooper.

DELEGATE COOPER: I rise to speak against the Maguire amendment, mostly for the reasons that were stated by the Reverend Coates. I am sure that in the article on Finance and Tax that all of those finance and tax provisions, as well as the veto, and any expenditures related to all of those, are addressed and I think that we would be a bit remiss if we were to try to address that in the Executive Section; not as a matter of placement but as a matter of substance.

I think the Committee on Finance and Tax gave a lot greater thought to this than the Committee on Executive

Powers, as Delegate Simmons stated, as we should, and I think that it is probably a more fluent section.

Therefore, I think that with all respect to the Committee on the Executive, that the Barbara Maguire Amendment should be voted down and we should vote up the Coates substitute motion and get on with the business tonight of dealing with executive powers and the executive department and stop trying to deal with financial and taxation matters which are not on the floor tonight.

CHAIRPERSON HARRIS: Delegate Street.

DELEGATE STREET: Madam Chair, may I have the General Counsel speak to this?

MR. THOMAS: Okay. I probably did not comment on this in my legal memo. I probably should have after rechecking the model state constitution. There is no reference to this section in the Executive Article of the model state constitution. It is covered in the Finance and Taxation Section and/or the Legislative Section and so it is not generally covered here. And probably should not be here.

CHAIRPERSON HARRIS: Delegate Kameny.

DELEGATE KAMENY: I just wanted to say that the present discussion seems rather pointless. The important thing is to get the substance acted on. It is all going to be

rearranged and properly so by the Committee on Style and Drafting in any case, as long as they are given the substance to work with. So let's get it voted on. It doesn't matter whose auspices get voted on or by or into, but let the substance be voted on.

DELEGATE THOMAS: Hear, hear.

CHAIRPERSON HARRIS: At this time, let's move the amendment which is Delegate Barbara Maguire's amendment to include in the substitute section B veto. All those in favor of including section B veto, please raise your hands.

It is included in Delegate Coates' amendment, substitute amendment. Include the section on veto.

SEVERAL VOICES: Point of order.

CHAIRPERSON HARRIS: All opposed. Abstention.

Okay, we have just voted to not delete Section B, veto. We are back to the substitute motion by Delegate Coates to strike out section A and C with the exception of lines 3 and 4,"The Governor shall submit to the legislature one or more appropriation bills and will try and fix it by law, a budget for the ensuing fiscal period." That has been fully discussed.

All those in favor of Delegate Coates' substitute motion, please raise your hands.

DELEGATE COATES: I asked to be recognized, Madam

Chair. You did not hear me, but I asked to be recognized.

CHAIRPERSON HARRIS: I called the vote and you were not recognized. I am sorry.

The vote, all those in favor of Delegate Coates' substitute motion, please raise your hands.

SEVERAL VOICES: Point of order. Point of order.

VOICE: How are we supposed to vote when we don't even know what we are doing?

VOICE: Would you please explain what is going on?

CHAIRPERSON HARRIS: Delegate Coates made a motion to strike -- to delete all of section 7, which would be subsection A, submission and C, reductions in expenditures. With the exception of lines 3 and 4, which read, "The Governor shall submit to the Legislature one or more appropriation bills at a time fixed by law a budget for the ensuing fiscal period." Period.

So section 7 will include those lines and section B on veto, which we have already voted. All in favor, please raise --

VOICE: Point of order.

DELEGATE COATES: Point of clarification, Madam Chair. My motion did not encompass anything except section A submission, "The Governor shall submit --"

CHAIRPERSON HARRIS: I just read that, Delegate Coates.

DELEGATE COATES: But I did not include in my motion the matter with respect to section C. I said delete --

CHAIRPERSON HARRIS: You said all of section 7. Section 7 has three parts.

DELEGATE COATES: That is right. I said delete all of it except "The Governor shall submit --"

CHAIRPERSON HARRIS: I read that.

DELEGATE COATES: But you read something else when --

CHAIRPERSON HARRIS: No, I did not. I said, "The body has voted."

SEVERAL VOICES: Yes, you did.

CHAIRPERSON HARRIS: The body has already voted to include section B, veto so your motion includes section A, submission and section C, reduction of expenditures; to exclude all of that with the exception of the line I read.

All of those in favor of --

DELEGATE SCHRAG: The line you read is the Mason Amendment, adding the words "one or more." It was an amendment to line 8, not line 3. You read it as if it were on line 3 but when Delegate Mason read it, he amended line 8, not line 3.

SEVERAL VOICES: That's right.

DELEGATE COATES: That's the problem, yes.

DELEGATE SCHRAG: He put the words, "one or more" after the word "legislature" on line 8. You read it out with the word "legislature" on line 3.

DELEGATE KAMENY: Yes. So on lines 3 and 4 it remains exactly as printed.

CHAIRPERSON HARRIS: Okay, thank you. Okay. So the line that is to remain is "The Governor shall submit to the Legislature at a time fixed by law a budget for the ensuing fiscal period," period.

DELEGATE KAMENY: That is right. You got it.

CHAIRPERSON HARRIS: Okay, all of those in favor of that being on this section 7, which includes what we just voted, please raise your hands.

[20 hands are raised.]

All of those opposed.

[There is no opposition.]

Abstention.

Section 7 of the Executive Branch Committee's report now reads: "A) Submission. The Governor shall submit to the Legislature at a time fixed by law a budget for the ensuing fiscal period and B) the language included in the veto."

Delegate Simmons.

DELEGATE SIMMONS: Yes, we are now on section 8.

CHAIRPERSON HARRIS: Delegate Croft.

DELEGATE CROFT: I would like to amend section B. Okay, after the word "Legislature," I would like it to read "And the item or items disapproved shall be --"

CHAIRPERSON HARRIS: You have to tell us what line.

DELEGATE CROFT: Yes, line 17. " The Governor's veto shall be overridden by a two-thirds vote with two thirds majority of the legislature present and voting."

And strike "in accordance with the methods prescribed for the passage of other bills over executive veto."

CHAIRPERSON HARRIS: Okay, the motion -- is there a second?

[A motion is made. There are several seconds.]

CHAIRPERSON HARRIS: The amendment by Delegate Croft is that [repeats as above.]

VOICE: We've already done that.

DELEGATE LOVE: Madam Chair, point of order.

CHAIRPERSON HARRIS: Point of order.

DELEGATE LOVE: I thought we already voted on Section 7 and I would say that that section's vote is finished.

DELEGATE KAMENY: We are on section 8.

DELEGATE LOVE: That is right. We are on section 8.

Therefore, that motion is out of order.

[General agreement expressed by the body.]

CHAIRPERSON HARRIS: You are correct. It has been voted on. It was just voted on.

DELEGATE CROFT: Point of order. We voted on an amendment. Point of order. Point of order. We voted on a substitute motion. We did not vote to -- point of order --

CHAIRPERSON HARRIS: Delegate Croft.

DELEGATE CROFT: We voted on a substitute motion. The only vote, the most recent vote was a substitute motion. We did not vote to accept section 7. And since we did not vote yet to accept section 7, an amendment is in order.

CHAIRPERSON HARRIS: If I am correct, Delegate Croft, I just finished reading all of section 7 and it has been voted on by this body and that was A, the line for submission and B, veto. And that is all of section 7 which was inclusive in Delegate Coates' motion and Delegate Maguire's amendment.

However, there is a motion on the floor by Delegate Croft to amend, further amend, section B, which has been properly seconded to include a two-thirds majority of the legislature present and voting. Discussion on that motion.

Delegate Bruning.

DELEGATE BRUNING: Yes, I would like to speak in favor of that in a very conditional way in which veto is overridden by two-thirds present and voting and secondly, the present language supports the methods prescribed for the passage of [overridden by noise in hall] executive veto and I believe it is inexact reference and unclear reference as to the legislation or if it would be another section of this bill but two-thirds is spelled out very clearly and would be in conformity with the language in Finance and Tax.

Thank you.

CHAIRPERSON HARRIS: Okay. Delegate Bruning, thank you. Now, I would like to make a comment. It seems that there are many conversations going on, on the floor regarding this one section. It would expedite things if the several of you who are discussing it would get together and come up with one whatever so that we can move on to section 8.

Delegate Love.

DELEGATE LOVE: I would like to speak against this motion. The Committee on the Legislature considered this very carefully and most legislatures require a two-thirds vote of all members, not two-thirds vote of the members present and voting and I think this is, not only does it not belong here but it is inconsistent with our committee's report.

Therefore, I urge the members of this body not to vote -- to vote against this amendment and we will take it up when it gets to the legislature and discuss clearly the pros and cons of two-thirds of all members present and voting versus two-thirds of all members. Thank you.

CHAIRPERSON HARRIS: Delegate Croft.

DELEGATE CROFT: I withdraw my amendment.

I would like to withdraw my amendment.

CHAIRPERSON HARRIS: Okay. The amendment has been withdrawn. Any other amendments to section 7.

Delegate Freeman.

DELEGATE FREEMAN: Yes. I would like to move to rescind part B of section 7.

VOICE: What?

DELEGATE LOVE: Yes, point of order.

DELEGATE BARNES: Point of order.

CHAIRPERSON HARRIS: Point of order of Delegate Barnes.

DELEGATE BARNES: That is a reconsideration of something that has already been passed.

DELEGATE FREEMAN: No, it is not. It is a different motion.

DELEGATE LOVE: Madam Chair, the motion to rescind

is out of order insofar as the motion to reconsider is in order at this time. Somebody has voted in favor of it, if she wanted to now propose to reconsider, she is against the rules.

Therefore, I would say the motion is out of order.

DELEGATE JORDAN: I thought you have to be recognized on a point of order.

CHAIRPERSON HARRIS: Delegate Jordan.

DELEGATE JORDAN: So let me deal first with this motion to rescind. A motion to reconsider is out of order because it would be a reconsideration of a constitutional provision and this is prohibited by Section 4.10 of our Rules.

So the question I am going to raise, Madam President, is that it clearly in our rules is a scheme that has been established and that scheme is that once the amendment is acted upon, or once a section or a paragraph or an article is acted upon, that the only way in which it can be changed is then at a second reading by a two-thirds vote.

And then, to reinforce that position, Madam Chair, is the section on motions for reconsideration which prohibits the assembly from reconsidering matters that deal with constitutional provisions.

Now, I am just trying to inquire of the Chair as to whether or not a motion to rescind, for instance, circumscribes

our provision under chapter 3 and chapter 4 of our rules inasmuch as it allows an action that normally would not be permitted unless a second reading were called for and only with two-thirds vote.

CHAIRPERSON HARRIS: Delegate Jordan, I think you are quite in order. We have entertained a section 7 amendment this evening that substitutes on section 7. The body has deliberated fully and it has been voted on to accept section 7, part of A and B as that section and I think I am going to have Delegate Simmons to move on to section 8.

MANY VOICES: Point of order. Point of order.

CHAIRPERSON HARRIS: Point of order, Delegate Long.

DELEGATE LONG: I am going to read to you from Roberts Rules, page 28, Motion to Rescind. [Reads same.]

So the motion, I believe to be in order but it requires a simple majority to actually rescind this section, if we should wish to do so.

CHAIRPERSON HARRIS: Your point of order is well-taken, Delegate Long and Delegate Simmons has the floor for section 8.

DELEGATE SIMMONS: The motion before the House is to adopt section 7 with the amendments. I so move.

CHAIRPERSON HARRIS: It has been properly moved

and seconded that we adopt section 7 with amendments.

SEVERAL VOICES: Point of order. Point of order.

CHAIRPERSON HARRIS: Section A, submission; Section B, veto. All of those in favor, will you raise your hands.

Please raise your hands. Will you please count?

[Confusion. Side conversations.]

[There is a raising of hands.]

All opposed. Abstentions. [Motion passes.]

So moved. Delegate Simmons, please move to section 8, principal departments.

DELEGATE SIMMONS: Madam President, I would like about 10 seconds of indulgence by this body because the items that have caused this problem, we did receive a letter from the Counsel to the Governor of the State of Delaware who spoke to the veto issue and pointed out that in terms of legislation, obviously gubernatorial veto is a power of inestimable value.

"Again, however, it must be used judiciously. I served as a legislator for many years before becoming Governor and I have signed or allowed to become law without my signature numerous measures for which I might not have voted had I been a member of the Legislative Assembly.

"The veto should be used only when objections are profound and the matter is one of considerable importance."

I wanted to share that because I think when a Governor takes time -- I am sorry, that was the Governor of Oregon -- when a Governor not only takes time to respond to our correspondence but to respond substantively, I think that it is a matter of respectful courtesy to also interject where it is appropriate those comments that they have taken time to share with us and I appreciate your indulgence to include that at this time.

Section 8, which is before us, principal departments.

A) limitation of number. B) Reorganization.

I move the adoption as amended of Section 8, principal departments.

[The motion is made.]

CHAIRPERSON HARRIS: It has been properly moved and seconded Section 8, A and B. Discussion. Delegate Kameny.

DELEGATE KAMENY: I would like to know the committee's thinking in imposing the restrictions on principal departments in 20.

DELEGATE SIMMONS: Yes. We examined many constitutions and then we had our own Mayor/Governor and invited each of the department heads of our own local government to share with us and as a matter of fact, the department of personnel, Mr. Jose Gutierrez, sent a very lengthy document with supporting

data that the state director of personnel generally is appointed by the Governor and he of course embraced that position himself.

We in the District of Columbia have 55 departments. We checked other states and we found that the states that have had revisions to their constitution have engaged in limiting the number of departments and 20 was the number that Michigan had and they did their revision in '63.

Maryland, whose did not pass, limited their departments. My point is that as we talked about the various aspects of government services, it seemed reasonable and feasible that 20 would cover the major departments because we provided that there could be shorter-lived special kinds of boards and commissions for special purposes which operate for two-year periods or something less than the four-year term.

We thought it was important not to permit a governor to get into the posture of being able to create because he had the imagination a department head and a department for every member who supported him in his or her campaign for the governorship and that that is an excellent way to engage in an exceedingly expensive government but at the same time, a cumbersome one and pay off political patronage by simply creating departments and making your friend a head of that department.

So we thought there ought to be a limit when you

think in terms of what is the universe of services that a state government ought to provide for its citizenry, so we thought 20 was indeed reasonable.

CHAIRPERSON HARRIS: Thank you. Okay, Delegate Coates.

DELEGATE COATES: Thank you. Am I recognized?

CHAIRPERSON HARRIS: Only for a minute. Don't get carried away.

DELEGATE COATES: I will take 30 seconds to share the question raised by Delegate Kameny but beyond that, to articulate a position of opposition against the finite quantification of 20. I do not think that is appropriate language for constitutional provision which in the prospect for the continuity of the state might involve us in strictures which would be limiting in the capabilities of the government to respond so that I propose a striking of the number 20 and any accompanying language so that line 7 ends without -- well, ends with "law." Period.

And that would be to say, "Not more than 20 (20 principal departments.)" I think this --

CHAIRPERSON HARRIS: Is there a second to the motion?

DELEGATE COATES: -- can be handled by Legislation.

CHAIRPERSON HARRIS: Is there a second to the motion?

CHAIRPERSON HARRIS: Hearing none, the motion loses for lack of second. Move on, Delegate Simmons.

DELEGATE SIMMONS: Yes, further information that ought to belong to the body is that one development during the past decade has been the accelerated adoption of constitutional amendments restricting the number of executive departments.

Eleven states now have such limitations, the most common limit being 20 departments; Colorado, Florida, Michigan Montana, North Carolina have adopted limitations since 1963 and other states with previous limits, Alasak, Hawaii, Massachusetts, Missouri, New Jersey and New York. They have 20 and --

CHAIRPERSON HARRIS: Thank you. Is there any other discussion on Section A, limitation of numbers?

May we have a motinn to adopt section A?

Delegate Eichhorn.

[Delegate Eichhorn moves the adoption. Seconded.]

CHAIRPERSON HARRIS: It has been moved and seconded that we adopt section A, limitation of numbers. All those in favor let it be known by a raising of hands.

[19 in favor.]

CHAIRPERSON HARRIS: All opposed. Abstentions.

So carried.

Delegate Simmons.

DELEGATE SIMMONS: Governor may make changes in the organization of the executive branch or in the assignment of functions among its units which are considered necessary for efficient administration. If such changes affect existing law, they should be set forth in executive orders which will be submitted to the legislature while it is in session and shall become effective and shall have the force of law 60 days after submission or at the close of session, whichever is sooner unless specifically modified or disapproved by a resolution concurred in by a majority of all of the members.

I move the adoption of Subsection B of Section 8.

[It is moved and there are several seconds.]

CHAIRPERSON HARRIS: It has been properly moved and seconded that we adopt Subsection B, Reorganization.

Discussion. Delegate Jackson.

DELEGATE JACKSON: I have a question for clarification. The subsection says "If such changes affect any existing law, they should be set forth in executive orders." This sounds to me like if the executive determined if a law exists, is appears to me likely that executive would have more power than we want him to under the Constitution. That subsection gives the Governor power to change the existing laws.

DELEGATE SIMMONS: You need to read the rest of it.

DELEGATE JACKSON: I read the rest of it and it basically says by executive order and the executive order cannot come before the Constitution, otherwise we get back into Nixonian Democracy.

DELEGATE SIMMONS: Now, this executive order -- you do know that executive orders exist all the time and if it was not for executive order, you know, women would not have any rights at all today.

DELEGATE JACKSON: No, Ma'am. My point is that executive order exceeds the Constitution or this may allow it to exceeds.

DELEGATE SIMMONS: No.

DELEGATE JACKSON: I am just asking for clarification of this.

DELEGATE SIMMONS: I just want you to read the next sentence, though. It says, "Which will be submitted to executive order." It will be submitted to the legislature while it is in session and shall become effective and shall have the force of law.

DELEGATE JACKSON: I know. My point is that the legislature can also pass unconstitutional things. I would like clarification before I make an amendment. Thank you.

DELEGATE SHELTON: Madam Chair, the section that

is under discussion, it is not unusual for an executive to make reorganizational changes but it is usual that they make them in turns with the legislators to assure that they don't terms go off and I think that if you read it in the context only of reorganization, it shows exactly what it means and not, you know, all sections of constitutional provisions. The limitation of what he or she can do is set out in the limitations of a number of departments and will be further spelled out in text and so forth but not an all-encompassing, you know, kind of bill just limited to reorganizational-at-the-moment parts.

CHAIRPERSON HARRIS: In order to answer Delegate Jackson, Delegate Love, is your point on that clarification?

DELEGATE LOVE: No, I have an amendment.

CHAIRPERSON HARRIS: Okay, is yours for clarification? Okay, may I recognize Delegate Eichhorn.

DELEGATE EICHHORN: [Inaudible.] It seems to me that ..... The legislature may pass a law saying that this department must do this. X department must do Y. And that the reorganization may abolish department X or it can have another agency serve that function. And that is the way I would .....view this ... not meaning that it is illegal but with the law spelled out, certain responsibilities which change through reorganization.

CHAIRPERSON HARRIS: Yes, Delegate Jackson.

DELEGATE JACKSON: But this can allow the governor to give everything over to the Secretary General, if he wants to and that is part of the administration.

CHAIRPERSON HARRIS: I don't read it like that.

DELEGATE JACKSON: I am asking the meaning of it.

DELEGATE SIMMONS: The legislature has to consent.

DELEGATE JACKSON: The legislature may also change the legislature has the power, too. That is my point. And I am just asking for clarification if they exceed the constitution.

CHAIRPERSON HARRIS: Are you satisfied with the clarification you have received?

DELEGATE JACKSON: No, I am not satisfied with that clarification.

CHAIRPERSON HARRIS: Is there any other discussion by the committee members? Anybody else? Delegates?

Legal Counsel, would you like to comment?

MR. THOMAS: If you will see my comments, I originally questioned the wording in this article but I have since looked at the model state constitution and this is the exact words in the model state constitution, word for word and I think that your explanation is probably applicable.

CHAIRPERSON HARRIS: Okay. Delegates -- Love, I think is next.

DELEGATE LOVE: Madam Chair, model constitution or not model constitution, I think the way this reads, the Governor could submit this reorganization one day before the end of the session, as our legal counsel first suggested.

Therefore, I would like to amend this so that it is clear that the legislature has time to consider the proposed changes. Therefore, I would like to amend it as follows:

This would be starting on line 11. "If such changes affect existing law, they shall be set forth in executive orders which shall be submitted to the legislature at least 60 days before the end of the regular session."

[Motion made. There are several seconds.]

DELEGATE LOVE: And then continue, "And shall be effective and shall have the force of law" and then the next thing about "60 days after submission or at the close of session, whichever is sooner" is struck and then say, "unless specifically modified or approved by a resolution concurred in by a majority of all members."

DELEGATE KAMENY : Would you repeat that?

DELEGATE LOVE: Shall I do that again?

CHAIRPERSON HARRIS: Yes.

DELEGATE LOVE: [Repeats proposed amendments.]

CHAIRPERSON HARRIS: So you are deleting on line 13, after the comma, [Repeats same.]

DELEGATE LOVE: Yes.

CHAIRPERSON HARRIS: Okay, is there a second for that?

[There are several seconds.]

CHAIRPERSON HARRIS: Okay, it has been moved and properly seconded by Delegate Love that beginning at line 11 it would read [repeats proposed amendments.]

Discussion on the motion. Delegate Bruning.

DELEGATE BRUNING: I would like to be clear with that. I think that if the legislature has any say whatsoever in the reorganization they need a guaranteed period of time and the way that it seems to me that it was written this clearly could be something that literally was done a day before the end of a session and the legislature would have absolutely no role.

This 60 days, I think, gives the legislature enough time for reaction without excessive time for delay so I think it is a good compromise.

CHAIRPERSON HARRIS: Delegate Charles Mason.

DELEGATE CHARLES MASON: I agree entirely with the

intent of the amendment. However, I think a little bit too much was stricken. I think the 60 days after "shall have the force of law" --"60 days after submission" should still be there because the way, as I understand the amendment now stands, it is indeterminate when the thing goes into effect and I think it is very important to add the "at least 60 days before the end of the regular session," which was added by the Love Amendment.

However, I do not think "shall have the 60 days after submission shall have the force of law" should have been stricken. I think what should have been stricken is "or at the close of the session, whichever is soonest."

My point being that I would amend it so as not to strike the "or at the close of the session or whichever is soonest" so that the thing would read --

CHAIRPERSON HARRIS: What line are you reading on?

DELEGATE CHARLES MASON: I'll read it as it would now run, if my suggestion is accepted by the body -- if my motion is adopted.

"Which shall be submitted to the legislature at least 60 days before the end of the regular session and shall become effective and shall have the force of law 60 days after submission unless specifically modified or disapproved by a

resolution concurred in by a majority of all members."

[The motion is made. There are several seconds.]

DELEGATE LOVE: I would accept that.

CHAIRPERSON HARRIS: Okay. So the amendment would leave in "and shall have the force of law 60 days after submission"?

DELEGATE CHARLES MASON: Right.

CHAIRPERSON HARRIS: Okay, discussion on the motion Delegate Rothschild and then Simmons.

You want to discuss the motion on the floor?

DELEGATE ROTHSCHILD: Oh, not that one, no. I had a question and now it has been cleared up.

CHAIRPERSON HARRIS: Okay, Delegate Simmons.

DELEGATE SIMMONS: I only want to say that there has been no violence done to this section by this amendment and if that clarification makes it effective in clarifying, fine. Because anyone has to be aware that there is no opportunity for railroading here by virtue of the very last section of that sentence. A resolution can be put together by legislature in five minutes or less so when you talk about a resolution, it can specifically, unless specifically modified or disapproved by a resolution concurred in by the majority of all the members, that is the safety valve, that very fact that

they can't reorganize when they are out of session and to say that someone needs 60 days to consider the reorganization recommended by the executive branch for more efficient administration is, I think, to indeed engage in inordinate delay unless this body is talking about an every day city council which simply has a new name called "state legislature" because state legislatures do not work every month of the year and have only 30 days off.

State legislators generally only function 120 days at most. Many of them only 60 days in the whole year so for us to be talking about they have to have 60 days prior to a recommendation for reorganization of the administration for efficient government is to indeed hold in our heads what is our experience of a city council and we have not moved to dealing in a state legislative mentality.

CHAIRPERSON HARRIS: Okay, we have had full discussion on the proposed amendment. Let's move the amendment of Section B, reorganization, which I read to you and I don't have to reread it, as proposed by Delegate Love and amended by Delegate Charles Mason.

All in favor of the proposed amendment?

[Based on request, rereads proposed amendment.]

DELEGATE KAMENY: With all due respect, I am still

not clear.

CHAIRPERSON HARRIS: Will you please read it?

SECRETARY COOPER: Section B, Reorganization reads: "The Governor may make changes in the organization of the executive branch or in the assignment of functions among its units which are considered necessary for ~~the~~ efficient administration. If such changes affect existing law, they shall be set forth in executive order and shall be submitted to the legislature and shall become effective and shall have the force of law 60 days after submission unless specifically modified or disapproved by resolution concurred in by a majority of all the members."

MANY VOICES: You left out a phrase. "At least 60 days."

DELEGATE CORN: Point of order. Point of order.

CHAIRPERSON HARRIS: Okay, on line 13, which reads, "It shall be submitted to the legislature at least 60 days before the end of the regular session."

All in favor of that amendment, please raise your hands.

DELEGATE CORN: Point of order. Point of order. Could we please have it newly read from line 12 down.

CHAIRPERSON HARRIS: That is not a point of order.

We have read it and you are stopping us in the middle of a vote.

VOICE: It is not a point of order. It is a point of information.

[It is generally indicated the body wishes the motion to be read again and Secretary Cooper rereads the entire motion to the body, see p. 63, including correction.]

CHAIRPERSON HARRIS: All in favor of that amendment, please raise your hands. Opposed. Abstention.

[Motion carries, 18 in favor, 11 opposed and 1 abstaining.]

CHAIRPERSON HARRIS: The motion carries, 18, 11, 1.

Delegate Simmons.

DELEGATE SIMMONS: I move the adoption of section 8, principal departments, as amended.

[Motion made. There are several seconds.]

CHAIRPERSON HARRIS: All in favor, let me know by saying aye. Opposed.

[In a voice vote, the motion carries.]

So carried. Now, Section 9, Boards and Commissions.

DELEGATE SIMMONS: Section 9, Boards and Commissions. As heads of the department. When a Board or a Commission is

at the head of a principal department --

CHAIRPERSON HARRIS: You must give Delegate Simmons your attention. The court reporter cannot hear and Delegates cannot hear. Delegate Corn, will you please put your hand down and let her finish doing what she is doing?

DELEGATE CORN: I had a point of order before and you failed to recognize me. I have a minority report.

DELEGATE SIMMONS: This first section, in light of discussions of previous clarity, it was decided that a -- that if we reversed the order of this first sentence and said, "The Governor may appoint members of Boards and Commissions with the consent of the legislature. Term of office and procedure of removal of such members shall be as prescribed by this Constitution --"

CHAIRPERSON HARRIS: [Rapping gavel for order.]

DELEGATE SIMMONS: "-- or by law"would simply simplify the first part of that sentence and that is what we recommend. We reversed the sentence. We started with, "When a Board or a Commission is at the head of a principal department unless elected or appointed by the Governor with the advice and consent of the legislature, the term of the office and procedure of removal of such members shall be as prescribed by this Constitution or by law."